

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

August 26, 2011

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Hawaii

Request for Plan Approval for Installation of Fence, General Lease No. S-5188,  
Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson, Lessee,  
Auhaukeae, North Kona, Hawaii, Tax Map Key: (3) 7-5-09:43.

PURPOSE:

Lessees Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson, are  
requesting permission to install a 4-foot-high chain-link fence on portions of three sides  
of the subject parcel to deter trespass from the adjoining commercial property.

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Auhaukeae situated at North Kona, Hawaii, identified by  
Tax Map Key: (3) 7-5-09:43, as shown on the attached map labeled Exhibit A.

AREA:

.338 acres, more or less.

ZONING:

State Land Use District:	Urban
County of Hawaii CZO:	V-.75 (resort-hotel)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Lessee shall use or allow the premises leased to be used solely for commercial purposes as may be permitted under the zoning ordinances of the County of Hawaii.

TERM OF LEASE:

50 years, commencing on May 19, 1989 and expiring on May 18, 2039. Last rental reopening occurred on May 19, 2009; next rental reopening is scheduled for May 19, 2019.

ANNUAL RENTAL:

\$31,150 due in semi-annual payments.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit E.

DCCA VERIFICATION:

Not applicable. The Lessees as natural persons are not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Obtain SMA minor or major permit, amendment of existing permit, or exemption, as applicable, prior to installation of the fence.

REMARKS:

This lease was before the Board of Land and Natural Resources at its meeting of January 27, 2011, Item D-3, on staff's recommendation of forfeiture. The recommendation arose out of Lessees' construction of a PVC pipe and shade cloth fence around the property that the County of Hawaii Planning Department determined to be a violation of the Special Management Area (SMA) statute and Planning Commission rules. On September 29, 2010, the County issued the lessees and the State a Notice of Violation and Order, which in turn triggered a default under the "compliance with laws" provision of General Lease

No. S-5188.

Land Division issued the lessees a notice of default that provided a 60-day cure period, but the Lessees did not cure within the time allowed. However, the Lessees removed the remnants of the fence and resolved the SMA violation prior to the Board meeting of January 27, 2011, and the forfeiture request was withdrawn. At the same time, the Board directed that any future proposed construction on the parcel must come before the Board with lessees' plans for the property.

By correspondence dated July 13, 2011 and August 12, 2011, lessees are requesting the Board's permission to install a 4-foot-high chain-link fence along sections of the north, east and south boundaries of the parcel. See Exhibits B and C attached.<sup>1</sup> Lessees explain that they are faced with continuing liability issues because persons using the Coconut Grove Marketplace (Marketplace) traverse the lease parcel and place personal property on it even though the Marketplace has no rights over the land.

#### Lease History

At its meeting of June 24, 1988, Item F-5, the Board approved the sale of a lease of the subject State land at public auction for the purpose of "[b]y itself or in consolidation with abutting parcels, commercial use(s) as may be permitted under the zoning ordinance of the County of Hawaii." General Lease No. S-5188 covering Tax Map Key: (3) 7-5-09:43 (Parcel 43) was thereafter sold at public auction held on May 18, 1989. Lanihau Partners L.P. (Lanihau), as the successful bidder, was issued a 50-year lease for commercial purposes. Through mesne assignments with consent of the Board, the lease was assigned to Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson (Lessees), pursuant to Board action of January 8, 2010, Item D-15. The Chairperson signed the consent to the assignment on August 31, 2010.

Parcel 43 is centrally located in Kailua-Kona, and is surrounded on three sides by the Marketplace. See Exhibit A. The Marketplace occupies Tax Map Keys: (3) 7-5-09:25 & 28 (the Marketplace Parcels). Both Parcel 43 and the Marketplace Parcels are located in the SMA.

The original lessee under the lease, Lanihau, was also the owner of the Marketplace Parcels. According to County of Hawaii Planning Department records, the Planning Commission issued SMA Use Permit No. 277 on December 28, 1988 to allow for the

---

<sup>1</sup> In the July 13, 2011 letter, Cord Anderson, one of the Lessees, requested permission to construct a 6-foot-high chain-link fence on three sides of the subject property, leaving the side facing Alii Drive open. Staff was unable to support the original proposal. Lessees then proposed a 4-foot fence with the elimination of 30 linear feet of fence on the northwest side of the parcel and the addition of 29 linear feet of fence on the southeast side.

construction of a commercial specialty center and related improvements on the Marketplace Parcels. After Lanihau acquired the lease of Parcel 43 at auction, the Planning Commission on September 27, 1990 approved an amendment to SMA Use Permit No. 277 to allow Parcel 43 to be developed as a passive park in the center of the commercial complex. The Planning Commission's approval of the amendment included the following language:

The provision of a park area within the commercial development will improve the quality of coastal scenic and open space resources and will not inhibit coastal recreational opportunities.

The minutes of the Board's June 24, 1988 meeting that approved the auction of the lease reflect that testimony was taken regarding public access onto the land:

[Former Board member] Mr. Paty asked Mr. Greenwell [of Lanihau] if he would explain how the property would be used should [Lanihau] be the successful bidder. As far as utilization of the parcel, Mr. Greenwell said that it has been the intent of their developer, Morris Development of California, to maintain a substantial portion (more than one-half) as an open area which would allow the public to come on the property and enjoy the view etc. No building construction is being anticipated for that parcel at this time although it would be clearly incorporated and maintained as part of the development of the 4-1/2 acres which they own and would be leasing directly back to them. [Emphasis added.]

General Lease No. S-5188 itself sets forth requirements pertaining to open space on the parcel:

Lessee shall at its own expense, develop and maintain a landscaped, coastal-view park on not less than fifty percent (50%) of the leased premises in accordance with plans and specifications submitted by the Lessee to and approved by the Chairperson prior to construction.

Lanihau and/or its successors and assigns generally maintained Parcel 43 as a landscaped open parcel with a sand volleyball court on it. The volleyball court is apparently a drainage design feature for the surrounding development. According to a news article that appeared in the West Hawaii Today on July 30, 2010, the owner of the Marketplace Parcels defaulted on a mortgage encumbering the private lands (but not Parcel 43) in 2009. A foreclosure action on the Marketplace Parcels followed. The volleyball net on Parcel 43 was apparently taken down in February 2010.

### Analysis of Fencing Request

The Lessees are proposing a temporary chain-link fence on three sides of the eastern half of the property. The fence will be 4 feet high and will not be enclosed on the western (makai) side. Lessees are requesting permission to keep the fence in place for six months.

Copies of selected portions of Lessees' fence plan are attached as Exhibits D-1 and D-2. Exhibit D-1 shows a plot plan of Parcel 43 with the proposed fence installation highlighted in yellow. There are two separate fence segments that utilize existing rock walls or other features to create a barrier on portions of the north, east and south boundaries of the parcel. The fence would block access on the walkways it crosses. Exhibit D-2 shows a typical section of the fence. Lessees explain that "No Trespassing Signs" will be placed on the fence segments that face the Marketplace Parcels. But there will be no signs on the makai side of Parcel 43. According to Lessees, the liability issue for them arises primarily out of the operators of the Marketplace Parcels placing construction material and machinery on Parcel 43.

General Lease No. S-5188 contains the following relevant provisions:

9. Improvements. Lessee shall not at any time during the term construct, place, maintain and install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Board and upon those conditions the Board may impose, including any adjustment of rent, unless otherwise provided in this lease....

12. Character of Use. Lessee shall use or allow the premises leased to be used solely for commercial purposes as may be permitted under the zoning ordinances of the County of Hawaii.

37. Landscaping. Lessee shall at its own expense, develop and maintain a landscaped, coastal-view park on not less than fifty percent (50%) of the leased premises in accordance with plans and specifications submitted by the Lessee to and approved by the Chairperson prior to construction.

6. Waste. Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the premises or any part....

One concern staff has with Lessees' request is that it is not clear how the installation of the chain-link fence would facilitate the commercial use of the property. Apparently, the

public would still have access to the entire parcel through the unfenced makai side. But once inside the property, there are no goods or services for the public to purchase on the site. Parcel 43 would instead be physically severed from the Marketplace. However, the fence installation is temporary. Lessees advise that they will develop a plan for utilizing the land during the time the fence is up. Staff is including a recommendation below that the fence be allowed to remain in place only six months, and that if the fence is on the premises longer than six months, Land Division reserves the right to issue a notice of default to Lessees for failure to comply with the Board's conditions for approval of the fence plan.

Additionally, it is not clear to staff how the installation of the fence on the property will promote Lessees' stated interest of keeping people from trespassing on the land. The public (including the Marketplace owners, tenants and customers) will still be able to come onto the portion of the land that is unfenced. Staff is also concerned that if installation of the fence is permitted, the public and adjoining landowners may claim that the fence is a nuisance or improper or offensive use of the State land. Further, it is not clear how the fence would impact persons with disabilities. However, the lease contains an indemnity provision by which Lessees are bound to indemnify the State against claims arising out of Lessees use of the premises. Staff is including a recommendation below that the Board's approval of the fence installation not be deemed a waiver or modification of the indemnity provision or any other obligation of Lessees under the lease.

There is tension in the lease between the commercial use restriction and the landscaped, coastal-view park requirement. Lessees' current proposal recognizes the public's right to access the parcel and keeps at least 50% of the property unfenced as a landscaped, coastal-view park. Lessees have the right under the lease to use the remaining area of the parcel for commercial purposes other than a landscaped, coastal-view park, subject to applicable rules and laws. Accordingly, staff submits the Lessees' fence installation plan to the Board for approval with the concerns noted above and the conditions set forth below.

**RECOMMENDATION:**

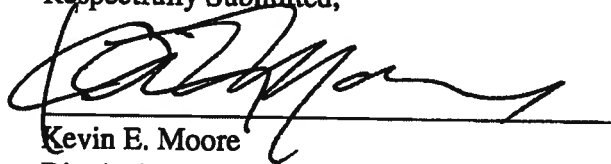
That the Board, subject to the Lessees fulfilling the Applicant Requirements listed above:

1. Approve the Lessees' request to install a 4-foot-high chain-link fence on portions of the subject parcel as indicated in Exhibit D-1 under the terms and conditions cited above, which are by this reference incorporated herein, and further subject to the following:
  - A. Lessees shall notify Land Division in writing when the fence installation is completed. Lessees shall remove the fence within six (6) months of the

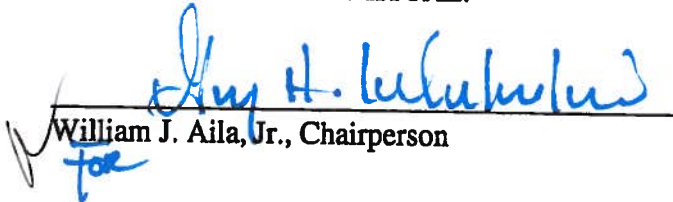
installation date. If the fence or any portion of it remains in place after that time, Land Division reserves the right to issue a notice of default to Lessees for failure to comply with the Board's conditions for approval of the fence installation plan.

- B. The Board's approval of the fence installation shall not be deemed a waiver or modification of the indemnity provision or any other obligation of Lessees under the lease.

Respectfully Submitted,

  
Kevin E. Moore  
District Land Agent

APPROVED FOR SUBMITTAL:

  
William J. Aila, Jr., Chairperson





Cord D Anderson  
, Hawaii 97643

July 13, 2011

Mr. Kevin Moore  
District Land Agent  
Department of Land and Natural Resources, Land Division  
75 Aupuni St., Room 204  
Hilo, Hawaii 96720

Subject: Parcel TMK 7-5-09: 43, Ref. No: GLS-5188

Dear Mr. Moore,

This parcel was originally leased from the state of Hawaii in 1990 and is currently sublet to Cord, Brad and D. G Anderson. The operating cost of this parcel is in excess of \$60,000 annually when taking into consideration the ground rent, insurance, legal, real property taxes etc.

The lessees have tried multiple times to come to terms with the adjoining property owner which owns Coconut Grove Marketplace, without even the courtesy of a response. They are faced now with having to explore other options for the property under the ground lease with DLNR.

The Anderson's are faced with a continual liability issue and have to address the trespassing of pedestrian traffic into their leased area by a neighbor that refuses to share in the financial burden. We have notified the Marketplace owners/managers with two letters asking them to find an alternative solution for their drainage and to cease trespassing onto subject property. Since the notifications have been sent, there has been no response nor any less trespassing. The pillar of private land ownership is the right to privacy and quiet enjoyment and every landowner/lessee is given the right under Hawaii state law. We seek support of the State, our Lessor, to assist us so we may enjoy this basic property right.

We are proposing for your approval a temporary 6' chain link fence that consists of 14' panels that are fastened together on 2" posts each 14'. Specs and plot plan forthcoming from Inaba Engineering. We are proposing a wire fence to minimize obstruction of ocean views for the public and our neighbors. We propose to only fence three sides (Kohala, mauka and partial Kau) and leave the side along Alii Drive unfenced so the public may continue to enjoy the view plain of the passive park we've created on the leased parcel. The proposed fence will be within the County of Hawaii's building code and satisfy the building department requirements.

We are seeking permission to have the fence up for 6 months. That will give us sufficient time to design and submit for approval an alternative plan if no agreement is reached with our neighbors.

Please find the attached ruling by Federal Judge Curren stating Coconut Grove Marketplace does not have ANY rights to use the state parcel, as it is a completely independent parcel.

Thank you for your consideration,



Cord Anderson

**EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

LBUBS 2007-C2 ALII DRIVE, LLC, )  
a Hawaii Limited Liability Company, )

Plaintiff, )

vs. )

ANEKONA, LLC, et al., )

Defendants. )

Civ. No. 09-00114 SOM-BMK

ORDER DENYING RECEIVER'S  
MOTION TO ENFORCE ORDER  
GRANTING PLAINTIFF'S *EX*  
*PARTE* MOTION FOR  
APPOINTMENT OF A RECEIVER  
ENTERED ON MARCH 20, 2009  
AND TO HOLD CERTAIN  
PARTIES IN CONTEMPT

ORDER DENYING RECEIVER'S MOTION TO ENFORCE ORDER  
GRANTING PLAINTIFF'S *EX PARTE* MOTION FOR APPOINTMENT OF A  
RECEIVER ENTERED ON MARCH 20, 2009 AND TO HOLD CERTAIN  
PARTIES IN CONTEMPT

Before the Court is Receiver's Motion to Enforce Order Granting  
Plaintiff's *Ex Parte* Motion for Appointment of a Receiver Entered on March 20,  
2009 and to Hold Certain Parties in Contempt. (Doc. # 94.) The Court heard the  
motion on January 8, 2010. After careful consideration of the motion, the  
supporting and opposing memoranda, and the arguments of counsel, Receiver's  
motion is DENIED.

Receiver filed his motion on December 23, 2009. (Mot. at 3.) In his  
motion, Receiver requests the Court to issue an order (1) requiring Defendant LRG  
("LRG") to immediately cease and desist from selling, transferring, or otherwise

disposing of its fee simple interest in parcels of land underlying the Coconut Grove Marketplace (the "Marketplace"); (2) requiring Patricia G. Greenwell, Trustee under the Patricia G. Greenwell Revocable Living Trust Agreement dated May 5, 1983 (the "Greenwell Trust"), to immediately cease and desist from transferring its leasehold interest in a parcel of land owned in fee by the State of Hawaii that adjoins the Marketplace (the "State Parcel"); (3) holding LRG and the Greenwell Trust, among others, in contempt of this Court's Order Granting Plaintiff's *Ex Parte* Motion For Appointment of a Receiver (the "Receiver Order"); and (4) awarding Receiver attorneys' fees and costs for bringing the instant motion. (Mot. at 2-3.) Receiver's requests are denied for the following reasons.

As to Receiver's first request, LRG maintains, and its counsel has confirmed, that it is not in the process of selling, transferring, or otherwise disposing of its fee simple interest in the parcels of land underlying the Marketplace. (Opp. at 2, 5; Opp. Ex. 5 at 2; Kawachika Decl. ¶¶ 3, 5.)

As to Receiver's second request, Receiver has no interest in the Greenwell Trust's leasehold interest in the State Parcel. Pursuant to the Receiver Order, "Receiver is directed and authorized to take immediate possession and control of the Estate Property and the rights thereunder, to the exclusion of Anekona, LRG and other Defendants." (Receiver Order at 7.) The Estate Property is collectively defined as "all of the real, personal, tangible and intangible personal

property held by Anekona and LRG against which Lender [Plaintiff LBUBS 2007-C2 Alii Drive<sup>1</sup>] holds a lien . . . and/or which constitutes security under the loan documents made by Anekona in favor of Lender . . . ." (*Id.* at 4.) The Estate Property includes, but is not limited to, "all of the rights, title and interests of Anekona and LRG in and to the . . . leasehold interests in the property under the [Marketplace] . . . ." (*Id.*) Under the foregoing, the Greenwell Trust's leasehold interest in the State Parcel is not part of the Estate Property and therefore, not within the Receiver's possession or control. Receiver concedes such. (Mem. in Supp. of Mot. at 3 (acknowledging that the "[State] [P]arcel is not part of the Estate Property and therefore technically not within the Receiver's possession or control"); ~~see also~~ *id.* at 17 (noting that the "State Parcel[ is] part of the Marketplace although not technically part of the Receivership Estate").) Accordingly, the Court is without the power to enjoin the Greenwell Trust from alienating its interest in the State Parcel.

Given the foregoing, Receiver's requests for holding LRG and the Greenwell Trust, among others, in contempt of the Receiver Order, and for an award of attorneys' fees and costs in bringing the instant motion are denied.

---

2.) <sup>1</sup> The Receiver Order defines "Lender" as Plaintiff LBUBS 2007-C2 Alii Drive. (*Id.* at

For the reasons stated above, Receiver's Motion to Enforce Order Granting Plaintiff's *Ex Parte* Motion for Appointment of a Receiver Entered on March 20, 2009 and to Hold Certain Parties in Contempt is DENIED.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, January 15, 2010



/s/ Barry M. Kurren  
Barry M. Kurren  
United States Magistrate Judge

**LBUBS 2007-C2 Alii Drive, LLC v. Anekona, LLC et al., CV. NO. 09-00114 SOM-BMK;  
ORDER DENYING RECEIVER'S MOTION TO ENFORCE ORDER GRANTING  
PLAINTIFF'S *EX PARTE* MOTION FOR APPOINTMENT OF A RECEIVER ENTERED ON  
MARCH 20, 2009 AND TO HOLD CERTAIN PARTIES IN CONTEMPT.**

Brian A Anderson  
Hawaii 97643

August 12, 2011

Kevin E. Moore  
Hawaii District Land Agent  
Department of Land and Natural Resources, Land Division  
75 Aupuni Street, Room 204  
Hilo, HI 96720

Dear Mr. Moore,

Thank you for your last letter outlining in more detail your concerns and thoughts on a possible temporary perimeter security fence for our State leased parcel. Taking into consideration your comments we are submitting our application for a newly designed perimeter fence with the below modifications.

1. We will lower the temporary security chain link fence height to 4 foot from the original 6 foot.
2. We propose to limit the fence to the Mauka portion of the parcel (under separate cover from Inaba Engineering) thereby leaving {over 50% of} the parcel completely open and unfenced. This design which would allow the CGM Center to retain their ADA access from Alii Drive. We will continue to monitor the situation and make sure this new, smaller fence design does provide the liability protection for both the State and the Andersons.

Inaba Engineering will be submitting a new plot plan with these modifications for processing. We are hoping to make the August 26th DLNR Board meeting and we ask for your help to achieve that time frame.

Mahalo,



Brian A Anderson

**EXHIBIT C**

# LEGEND:

AC Asphalt Concrete  
BFP Backflow Preventer  
Bldg. OH Building Overhang  
Conc. Concrete  
COTG Cleanout to Grade (sewer)  
CRM Concrete Rubble Masonry  
DS Down Spout  
E/B Electric Box  
E/P Electric Utility Pole  
fd Found  
HB Hose Bib  
HDCP Handicap  
HELCO Hawaii Electric Light Co., Inc. (Electric Box)  
HTCO Hawaiian Telephone Co., Inc. (Telephone Box)

ICV Irrigation Control Valve  
MGN Magnetic Nail  
meas. Measured  
OP Observation Ports  
PRV Pressure Reducing Valve  
PVC Polyvinyl Chloride Pipe  
SD Storm Drain  
SDMH Storm Drain Manhole  
SMH Sewer Manhole  
T/P Telephone Pole  
U/P Utility Pole  
WL Waterline  
WM Water Meter  
WV Water Valve Box

☆ Lamp Pole with Light  
● Light  
--- Drainage flow direction  
--- CRM Wall, Stonewall or Stone Retaining Wall  
XX Existing Fire Hydrant  
--- Irrigation Water Sprinkler  
● Irrigation Control Valve  
--- Overhead Television Cable Service  
--- Overhead Electric Service  
--- OT Overhead Electric & Telephone Service  
--- T Overhead Telephone Service  
--- Concrete (walkway/slab)  
--- Property Line  
± Plus or Minus (more or less)

TRUE NORTH  
Scale: 1 in. = 20 ft.

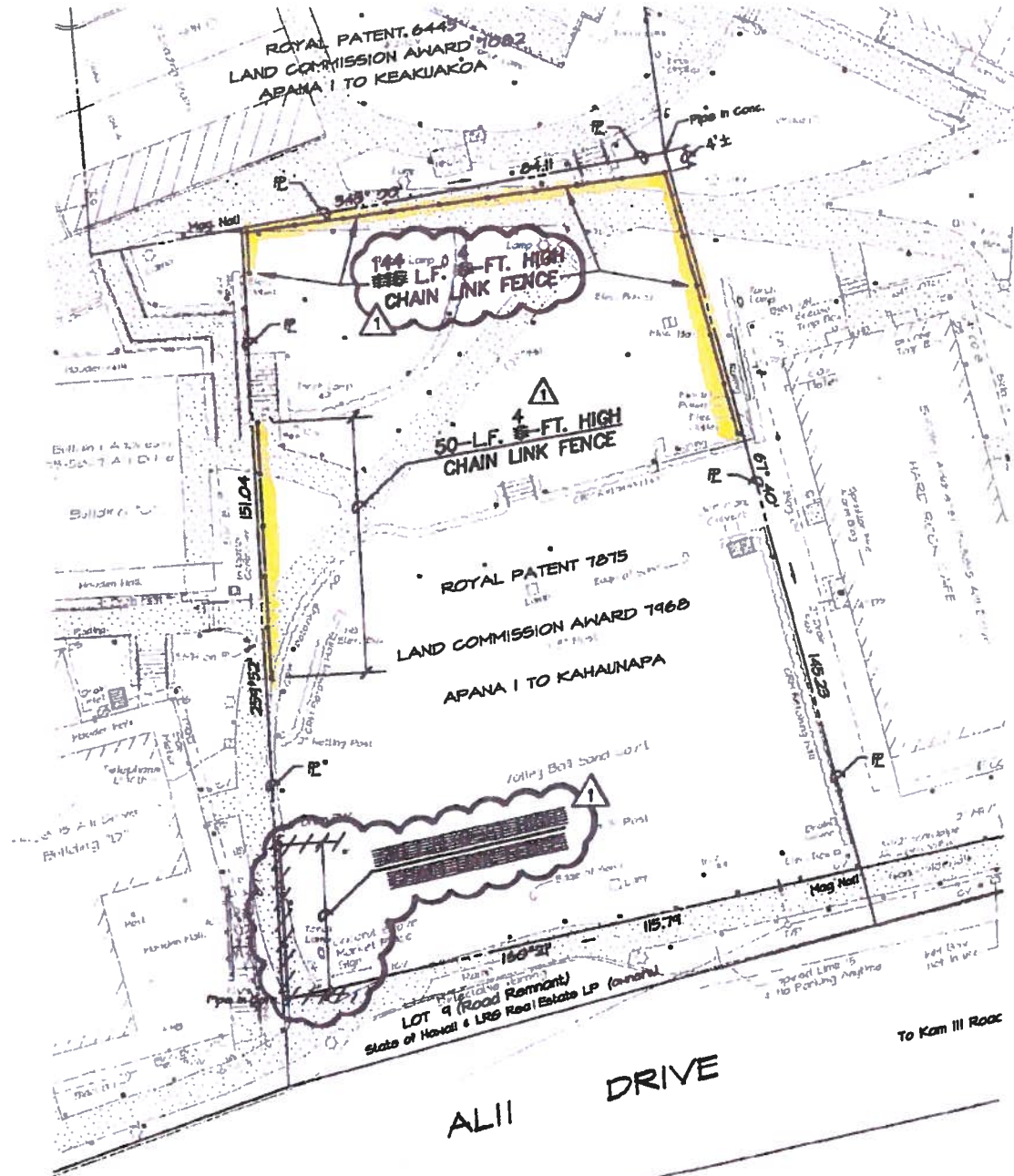


EXHIBIT D-1

FENCING PLAN

ADVA  
SUBJ

**OWNERS:**  
State of Hawaii  
204 Kapihulu Ave., Apt. 404  
Honolulu, Hawaii 96815

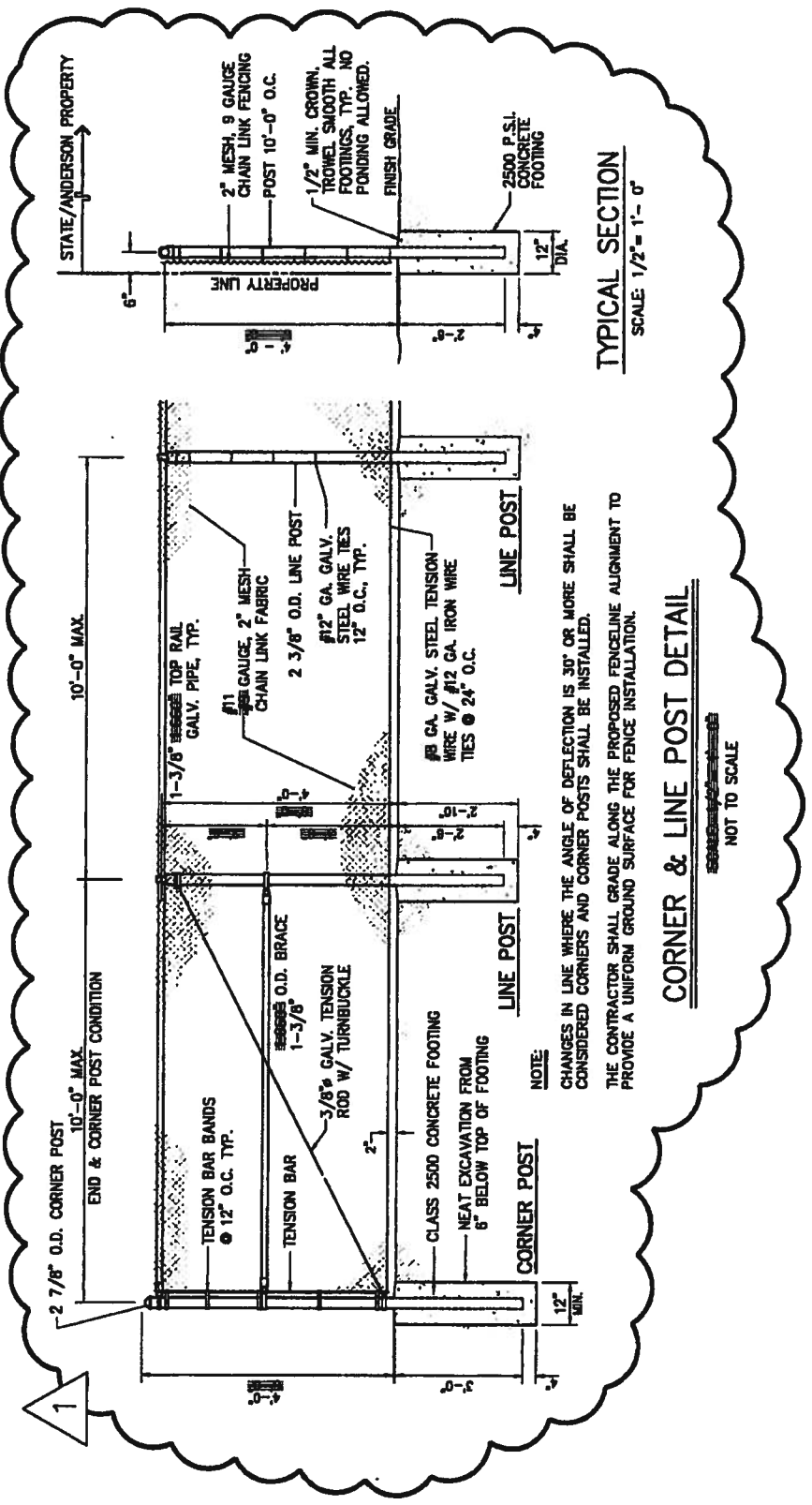
**PREPARED FOR:**  
Brad Anderson  
64-5085 Kalahe St.  
Kamuela, Hawaii 96743  
INABA ENGINEERING, INC.  
273 Waioluenua Ave.  
Hilo, Hawaii 96720  
Telephone: (808) 981-3727

Job No. 11029  
Rev. 04/08  
Date: 04/20/2011  
This work was prepared by me or under my supervision.

Sht. No. 1  
of 1  
Shts.

CHAIN LINK FENCE - CHART									
HEIGHT OF FENCE	MIN. DEPTH OF FOOTING			NOMINAL PIPE SIZE OF FENCE POSTS					
	LINE POST	CORNER, PULL & END POSTS		LINE POST	CORNER, PULL & END POSTS		TOP RAIL	BRACES	CHAIN LINK FABRIC
		O.D.	WT/FT		O.D.	WT/FT			
3'	2' - 0"	1-7/8"	2.72	1-7/8"	1-7/8"	2.72	1-3/8"	1.68	FINISH TOP EDGE BOT EDGE
4'	2' - 6"	3' - 0"	2.72	1-7/8"	2-3/8"	3.65	1-3/8"	1.68	KNUCKLED KNUCKLED
5'	3' - 0"	3' - 0"	2.72	1-7/8"	2-3/8"	3.65	1-5/8"	2.27	KNUCKLED KNUCKLED
6'	3' - 0"	3' - 0"	2.72	2-3/8"	2-7/8"	5.78	1-5/8"	2.27	KNUCKLED KNUCKLED

ALL PIPE, FITTINGS, AND ACCESSORIES SHALL BE GALVANIZED, TYP.



**EXHIBIT D-2**



NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**EXEMPTION NOTIFICATION**

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

**Project Title:** Request for Plan Approval for Installation of Fence, General Lease No. S-5188, Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson, Lessees

**Project Number:** None

**Project Location:** Auhaueake, North Kona, Hawaii, Tax Map Key: (3) 7-5-09:43

**Project Description:** Lessees propose to install a temporary, 4-foot-high chain-link fence around portions of the eastern or mauka half of property they lease from the State. The fence will be in place no longer than six months.

**Consulted Parties:** County of Hawaii Planning Department

**Exemption Class No.:** In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment under the following:

Exemption Class No. 1, which states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

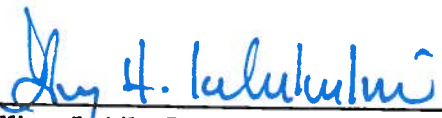
The Final Environmental Assessment (FEA) for the Coconut

**EXHIBIT E**

Grove Marketplace project was published in the OEQC Bulletin on November 23, 1988 with a finding of no significant impact (FONSI). The FEA covered both the private and State lands on which the project was to be developed. The use proposed for the subject State parcel was as a passive park with a series of fishponds and botanical gardens. In actuality, the parcel was landscaped and a volleyball court was built on it. The installation of a temporary 4-foot high chain-link fence on portions of the eastern or mauka half of the parcel is a negligible expansion of an existing use as the land will continue to be devoted to passive park use. The fence will remain in place no longer than six months. Accordingly, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

**Recommendation:**

The installation of a temporary 4-foot high chain-link fence on portions of the eastern or mauka half of the parcel for no longer than six months in itself will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the proposed action is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to Lessees' proposed use of the lands, Lessees shall be responsible for compliance with Chapter 343, HRS, as amended.

  
\_\_\_\_\_  
William J. Aila, Jr., Chairperson

8.17.11

Date